IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR R. ANDERSON,

Petitioner,

No. 2:99-cv-1086 JAM JFM (HC)

VS.

CAL TERHUNE, et al.,

Respondents.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's October 16, 2009 denial of his application for a writ of habeas corpus together with a motion for a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

Petitioner seeks a certificate of appealability for eight claims. A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues satisfy" the requirement. 28 U.S.C. § 2253(c)(3).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is "debatable among jurists of reason," could be resolved differently by a different court, or is "adequate to deserve encouragement to proceed further." Jennings v. Woodford,

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1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹ 2 Petitioner has made a substantial showing of the denial of a constitutional right in 3 his claim of juror misconduct regarding the introduction of extrinsic almanac evidence. For the 4 reasons set forth in the magistrate judge's August 11, 2009 findings and recommendations, 5 petitioner has not made a substantial showing of the denial of a constitutional right with respect to the other claims for which a certificate of appealability is sought. 6 7 In accordance with the above, IT IS HEREBY ORDERED that: 1. Petitioner's October 19, 2009 motion for a certificate of appealability granted 8 9 as to petitioner's claim of juror misconduct regarding the introduction of extrinsic almanac 10 evidence and denied in all other respects; and 11 2. The Clerk of the Court is directed to process petitioner's appeal to the United States Court of Appeals for the Ninth Circuit. 12 13 DATED: November 24, 2009 14 15 /s/ John A. Mendez UNITED STATES DISTRICT JUDGE 16 17 18 19 20 21 22 23 24 25 ¹ Except for the requirement that appealable issues be specifically identified, the standard

for issuance of a certificate of appealability is the same as the standard that applied to issuance of

a certificate of probable cause. Jennings, at 1010.

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